

**REMARKS**

Applicants have carefully reviewed the Final Office Action mailed on September 10, 2008. Applicants respectfully traverse (and do not concede) all objections, rejections, adverse statements, and adverse assertions made by the Examiner. With this amendment, claims 1, 37, and 39 are amended. No new matter is added. Please cancel claims 3 and 41 without prejudice. Claims 1, 7, 37, 39-40, and 42-43 remain pending.

**Claim Rejections Under 35 U.S.C. §103**

Claims 1, 3, 37, 39-41, and 43 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kline in U.S. Patent No. 5,376,094 in view of Marken in U.S. Patent No. 4,875,718. Please note that claims 3 and 41 are now canceled. Regarding claim 1, this claim is amended to recite that the shaft is moveable between a first position where the snare loop is substantially disposed within the sheath and a second position where the snare loop substantially extends distally out of the distal end region of the sheath and that at least the first end of the swivel is disposed within the sheath when the shaft is in the second position. These limitations may be desirable for a number of reasons. For example, such an arrangement may help to reduce the possibility that the swivel may catch on the sheath when the shaft (and/or snare loop) is proximally retracted. See page 4, lines 7-11. The cited art does not teach or suggest these limitations. For example, the crimp band 58 in Kline is disposed distally of the sheath 14 when the snare loop 20 is extended distally out of the distal end region of the sheath 14. Marken also fails to teach or suggest the claimed invention, let alone any claimed arrangement of a swivel in a surgical snare device. Consequently, Applicants respectfully submit that the amendment to claim 1 distinguishes this claim from the cited art.

Regarding claim 37, this claim is similarly amended to recite that the shaft is moveable between a first position where the snare loop is substantially disposed within the sheath and a second position where the snare loop extends distally out of the distal end region of the sheath and that the swivel is disposed within the sheath when the shaft is in the second position. For reasons similar to those set forth above in relation to claim 1, Applicants respectfully submit that this amendment distinguishes claim 37 from the cited art.

Regarding claims 39-40 and 43, claim 39 is similarly amended to recite that the shaft is moveable between a first position where the snare loop is substantially disposed within the

sheath and a second position where the snare loop extends distally out of the distal end region of the sheath and that the swivel is disposed within the sheath when the shaft is in the second position. For reasons similar to those set forth above in relation to claims 1 and 37, Applicants respectfully submit that this amendment distinguishes claim 39 from the cited art. Because claims 40 and 43 depend from claim 39, they are also patentable based on the amendment to claim 39 and because they add significant elements to distinguish them further from the art.

Claims 7 and 42 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kline in view of Marken as applied to claims 1, 3, 37, 39-41, and 43 above, and further in view of Fleury Jr. in U.S. Patent No. 4,326,530. For the reasons set forth above, Applicants respectfully submit that amended claims 1 and 39 are patentable over Kline and Marken. Fleury Jr. fails to overcome the shortcomings of Kline and Marken. Consequently, Applicants respectfully submit that claims 1 and 39 are patentable over the combination of Kline, Marken, and Fleury Jr., to the extent that such a combination is even possible. Because claims 7 and 42 depend from amended claims 1 and 39, respectively, they are also patentable for the same reasons as claims 1 and 39 and because they add significant elements to distinguish them further from the art.

### **Conclusion**

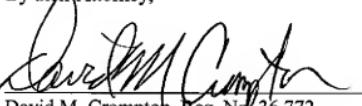
Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

John A. Griego et al.

By their Attorney,

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